

MINISTERIAL GUIDELINE

Canadian Environmental Assessment Act, s. 58 (1)(a)

**PROCEDURES
FOR AN ASSESSMENT
BY A REVIEW PANEL**

November 1997



*Environmental Assessment...
before you decide*



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

PROCEDURES FOR AN ASSESSMENT BY A REVIEW PANEL

**A guideline issued by
the Honourable Christine S. Stewart, Minister of the Environment
pursuant to s. 58(1)(a) of the
*Canadian Environmental Assessment Act***

November 1997

This document can be found on the Agency's Internet site: <http://www.ceaa.gc.ca>

Ce document est aussi disponible en français.

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Cat. No. En106-39/1997E

ISBN: 0-662-26230-1

PROCEDURES FOR AN ASSESSMENT BY A REVIEW PANEL

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PROCEDURES FOR AN ASSESSMENT BY A REVIEW PANEL**1.0 APPLICATION**

- 1.1 These procedures are intended to apply to all assessments by a review panel pursuant to the Canadian Environmental Assessment Act (the Act). The procedures will apply for the period beginning upon referral (including pre-referral notice where given) by a Responsible Authority or the Minister of the Environment (the Minister) of a project for assessment by a review panel, and ending at government response to the report of the review panel. All federal review panels appointed pursuant to the Act will follow these procedures unless the Minister determines that there is a situation that warrants modification. Any such determination would be in consultation with the Responsible Authority.
- 1.2 The Canadian Environmental Assessment Agency (the Agency) shall consider these procedures along with the requirements of s. 41 of the Act in discussions with non-federal jurisdictions in the case of joint reviews.
- 1.3 In cases where a federal authority follows an assessment process other than that described in the Act and a request is made for substitution of that process, the Agency, in consultation with the federal authority, will consider the procedures in this document and the requirements of s. 44 of the Act in providing advice to the Minister on whether or not the process is an appropriate substitute. The Minister will then decide whether or not to approve the substitution of that process for an environmental assessment by a review panel under the Act.
- 1.4 The Agency shall be responsible for reporting to the Minister on the application of these procedures.
- 1.5 The panel review process is dynamic and will continue to evolve. The Agency shall review these procedures upon completion of the first federal panel review employing them.

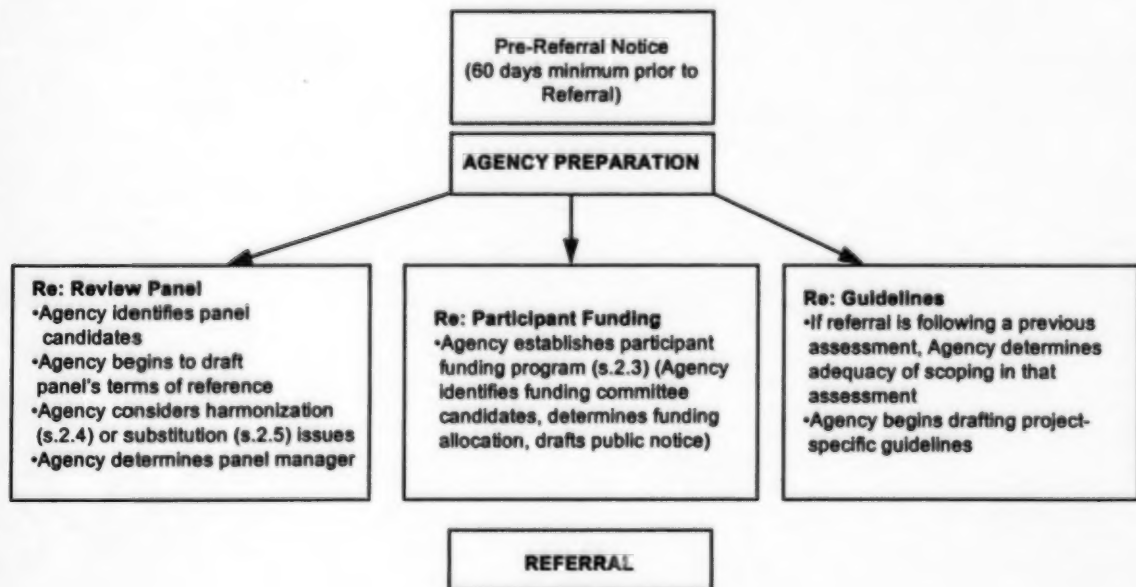
2.0 INITIATION OF AN ASSESSMENT BY A REVIEW PANEL

2.1 Pre-Referral Notice

- 2.1.1 To facilitate meeting the time periods prescribed in this document, it is recommended that the Responsible Authority provide the Agency with a minimum 60 day pre-referral notice in writing of assessment by a review panel. Such notice would not bind the Responsible Authority to referring the project, but should be given if a project is likely to be referred for assessment by a review panel. The pre-referral notice should also include a project description. A failure to provide pre-referral notice will result in an extension of the overall time period by a maximum of two months.

As indicated in Figure 1, the Agency will begin preparatory work for the panel review upon receipt of the pre-referral notice. The section numbers following the text refer to sections in this document that provide further detail.

Figure 1 - Pre-Referral



2.2 Referral

2.2.1 As indicated in Figure 2, there are eight provisions in the Act for referring a project to public review (review panel or mediation or a combination of both).

Figure 2 - Referral to Public Review

SECTION OF ACT	INITIATOR	WHEN
20(1)(c)	Responsible Authority	after screening, where significant adverse environmental effects are uncertain or likely, or public concern warrants referral to public review
21(b)	Responsible Authority	possible at any time where a project is described on the Comprehensive Study List Regulations
23(b)	Minister of the Environment	after review of comprehensive study report and any comments received, Minister determines that significant adverse environmental effects are uncertain or likely, or public concern warrants referral to public review
25	Responsible Authority requests Minister to refer	at any time where the Responsible Authority is of the opinion that a project may cause significant adverse environmental effects or when public concern warrants referral to public review
28	Minister of the Environment	at any time Minister is of the opinion that a project may cause significant adverse environmental effects or public concern warrants reference to public review, but after consulting with the Responsible Authority (or federal authority where no Responsible Authority exists)
46	Minister of the Environment	at any time Minister is of the opinion that a project may cause significant adverse transboundary environmental effects (interprovincial) and no federal power, duty, or function exists in relation to a project
47	Minister and Secretary of State for External Affairs	at any time Minister is of the opinion that a project may cause significant adverse transboundary environmental effects (international) and no federal power, duty, or function exists in relation to a project
48	Minister of the Environment	at any time Minister is of the opinion that a project may cause significant adverse environmental effects on lands of federal interest and no federal power, duty, or function exists in relation to a project

- 2.2.2 Where a Responsible Authority refers a project for public review, the Responsible Authority shall write a letter of referral to the Minister indicating, as appropriate:
- a) a description of the project;
 - b) recommendations regarding determination of the scope of the project, pursuant to s. 15 of the Act;
 - c) recommendations as to the scope of the factors that should be taken into account in the review, pursuant to s. 16 of the Act;
 - d) the nature of the decision that must be taken by the Responsible Authority regarding the proposed project (i.e. an explanation of the power, duty or function that the Responsible Authority may exercise);
 - e) information on the extent of public consultation to date;
 - f) the reasons for the referral;
 - g) the Responsible Authority's assessment of the feasibility of mediation;
 - h) if applicable, a request that the panel review be carried out by a substitute panel pursuant to s. 43(1) of the Act, or jointly with another jurisdiction as defined in s. 40(1) of the Act; and
 - i) an indication of whether there are other Responsible Authorities in the review.
- 2.2.3 The letter of referral referred to in 2.2.2 shall be made available to the public by the Agency upon receipt. The Agency shall provide public notice of the referral to allow the public to prepare for the review.
- 2.3 Participant Funding**
- 2.3.1 For each project subject to mediation or assessment by a review panel, the Agency shall establish and administer a participant funding program to facilitate the participation of the public. The Agency shall provide notice of the program within 7 days of referral, where pre-referral notice has been provided. The review panel manager shall ensure that all necessary documents are passed on to the administrators of the participant funding program.
- 2.3.2 Funding during the early phases of the review may assist the public to:
- a) review a draft project-specific guidelines document issued by the Agency; and
 - b) prepare for and attend any planned scoping meetings held to identify issues that should be included in the guidelines.
- 2.3.3 Participants will also be entitled to apply for money to assist them in reviewing the Environmental Impact Statement (EIS), and to prepare for and participate in public hearings.

2.4 Harmonization with Other Jurisdictions

- 2.4.1 The governments of certain provinces (see Appendix C) have developed or are in the process of developing harmonization agreements with the federal government, which specify process requirements in situations where both jurisdictions apply.
- 2.4.2 Where there is no harmonization agreement that specifies a joint public review process, the procedures in this document will apply unless modified by a joint project-specific agreement developed as outlined in section 1.2. Where a joint project-specific agreement is developed, the Agency shall work with the Responsible Authority to determine any timing and harmonization implications of the referral, and shall initiate discussions with the jurisdiction to coordinate the assessment. The draft project-specific agreement shall be published before the commencement of the hearings conducted by the review panel [s.40(4)].
- 2.4.3 The Responsible Authority will be an active participant in the Agency-led negotiations for a joint project-specific agreement. In most cases, negotiations on such agreements commence before the Responsible Authority's letter of referral is sent to the Minister. The Minister may enter into an agreement with the other jurisdiction for the conduct of one review [s. 40(2)(a)], provided that there is agreement on inclusion of the basic requirements of s. 41 of the Act into the review process.

2.5 Substitution

- 2.5.1 In cases where a federal authority follows an assessment process other than that described in the Act and a request is made for substitution of that process, the Agency, in consultation with the federal authority, will consider the procedures in this document and the requirements of s. 44 of the Act in providing advice to the Minister on whether or not the process is an appropriate substitute. The Minister will then decide whether or not to approve the substitution of that process for an environmental assessment by a review panel under the Act.

2.6 Aboriginal Considerations

- 2.6.1 These procedures do not limit aboriginal rights.
- 2.6.2 It is recognized that aboriginal participation in panel reviews may require review panels to develop different procedures which take into account aboriginal culture and values.

3.0 MEDIATION AS PART OF AN ASSESSMENT BY A REVIEW PANEL

- 3.1 Upon referral to public review, the Minister, acting on advice from the Agency, may refer part [s. 29(1)(b)] or all [s. 29(1)(a)(i)] of the environmental assessment relating to a project to a mediator. Such a referral will not take place unless the interested parties have been identified and are willing to participate in the mediation [s. 29(2)].
- 3.2 Where part or all of the environmental assessment is referred for mediation, the Minister shall, after consulting with the Responsible Authority and all interested parties who are to participate in the mediation, appoint any person meeting the requirements of s. 30(1)(a) as a mediator, and fix the terms of reference for the mediation. The Minister may set timelines for the completion of the mediation.
- 3.3 Where it has been determined that a part of the environmental assessment is to be referred to a mediator and part to a review panel, the mediator should be appointed as early in the panel review as possible. The mediator should make every effort to conduct his or her work as expeditiously as possible to allow for the early identification of issues for which the mediation is not likely to produce a result that is satisfactory to all participants. This would allow the Minister to terminate the mediation exercise and refer unresolved issues to the review panel in a timely manner, pursuant to s. 29(4) of the Act.
- 3.4 Where a review panel has been appointed, a Minister may, after consulting with the review panel, refer any issue relating to the assessment to a mediator [s. 29(3)]. The appointment of a mediator and the mediation process should be completed expeditiously. The Minister shall consult the Responsible Authority prior to appointing a mediator and fixing terms of reference.
- 3.5 In cases where part of an environmental assessment has been referred to a mediator and part to a panel review and the mediation exercise is completed prior to the completion of the panel review, the review panel will consider any unresolved issues from the mediation exercise during the public hearings if so directed by the Minister [s. 29(4)].
- 3.6 Once appointed, the mediator's first task is to work with the Responsible Authority and interested parties to develop protocols or ground rules that will govern the mediation. Those could include agreements on the roles and responsibilities of the parties and the mediator. Other matters to be discussed include the timetable for mediation.
- 3.7 The mediator may, at any time, allow an additional interested party to participate in a mediation upon agreement by other parties [s.31].

- 3.8 The mediator shall make every effort to ensure that the discussions remain focused and productive, and that the participating representatives maintain links with their organizations.
- 3.9 The mediator shall submit his or her report to the Minister and the Responsible Authority at the conclusion of the mediation, whether or not an agreement has been reached. The report must not divulge any confidential information, and should be limited to a brief record of any agreements and outstanding issues.
- 3.10 To facilitate the appointment of mediators, the Agency shall prepare and maintain an up to date list of qualified persons to act as mediators. The list shall be available to the public. In general, appointments of mediators shall be made from this list.

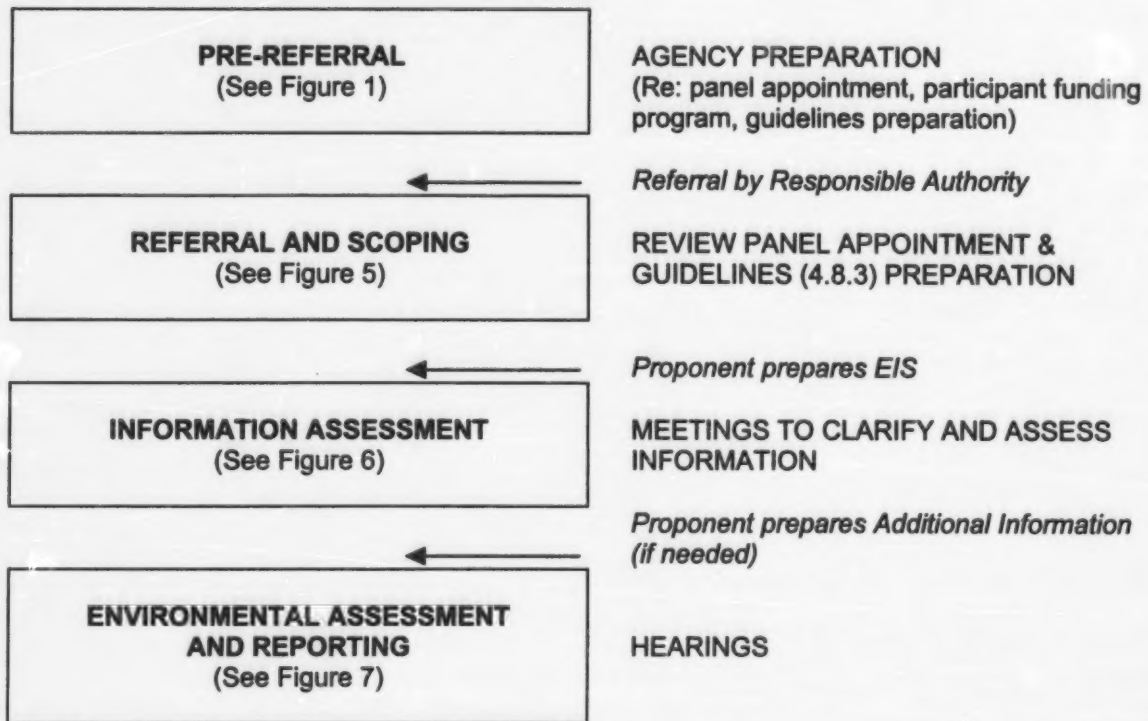
4.0 ASSESSMENT BY A REVIEW PANEL

4.1 Time Periods

4.1.1 All time periods listed in this document are in calendar days.

4.1.2 The various stages of the panel review process are outlined in Figure 3. A more detailed flow chart is located in Appendix E.

Figure 3 - Assessment by a Review Panel



4.1.3 The individual time periods indicated in the flowchart in Appendix E are for guidance purposes only, with the exception of certain mandatory time periods. The mandatory time periods are as follows:

Time for the public to review draft guidelines	45 days (minimum)
Time for the public to review EIS	60 days (minimum)
Notice for information assessment meetings	45 days (minimum)
Time for review panel to determine if additional information required following completion of 60-90 day public review of EIS	30 days (maximum)
Notice for hearings	45 days (minimum)

- 4.1.4 The mandatory time period for a review, from referral to submission of the panel's report must not exceed 396 days (approximately 13 months) where the panel does not ask the proponent to submit additional information. This overall time period does not include the time required for the proponent to prepare the EIS or the time required to prepare any additional information required by the review panel. Within that overall time period, the specific mandatory time periods in 4.1.3 must be respected. The review panel is expected to complete the remainder of the phases within the overall 396-day time period.
- 4.1.5 The mandatory time period for a review, from referral to submission of the panel's report must not exceed 441 days (approximately 14.5 months) where the review panel asks the proponent to submit additional information. This overall time period does not include the time required for the proponent to prepare the information required for an assessment. Within that overall time period, the specific mandatory time periods in 4.1.3 must be respected. The review panel is expected to complete the remainder of the phases within the overall 441-day time period.
- 4.1.6 If an interested party or the proponent is of the view that a time period to be used by a review panel should be changed, it shall submit a written request to the review panel chairperson. Normally, the review panel will give an opportunity for input from other interested parties, including the proponent, on the request in determining whether or not it supports the request. If the review panel supports the request, and cannot accommodate an increase or decrease in a specific time period without affecting the overall time period for the review, the review panel will request approval from the President of the Agency to change the time period specified in this document or that specified in the panel's terms of reference. The review panel will provide a detailed justification as to why additional time is required. Upon receipt of request to change the time period(s), the President of the Agency will consult with the Responsible Authority and rule on the review panel's request within 7 days. The Agency will inform the public of any changes to the time periods.
- 4.1.7 For panel reviews preceded by a previous assessment, the assessment by the review panel may have modifications in the early stages only (see sections 4.8.10 through 4.8.13 of this document). These modifications take into account the documentation preparation and consultation that have taken place in the previous assessment.

4.2 Selection and Appointment of the Review Panel

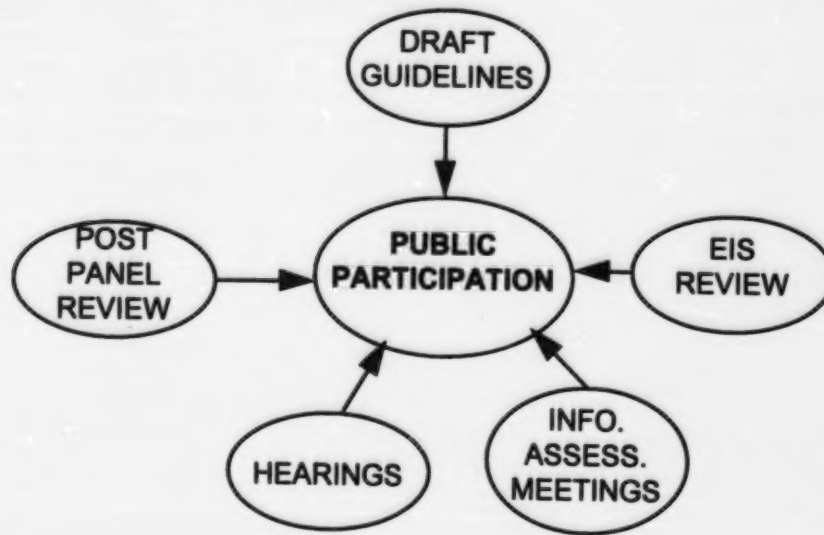
- 4.2.1 The Agency shall identify candidates for appointment to review panels in consideration of the criteria stated in s. 33(1)(a) of the Act. Persons appointed will normally be chosen from outside the public service, shall be unbiased, free from any conflict of interest relative to the project and shall have knowledge or experience relevant to the anticipated environmental effects of the project [s. 33(1)(a)(i)].

- 4.2.2 To facilitate the appointment of review panel chairpersons, the Agency shall prepare and maintain an up to date list of qualified persons to act as chairs of review panels. This list shall be available to the public. In establishing the list, the Agency should make every effort to select persons experienced in chairing review panels or review boards. In general, review panel chair appointments shall be made from the list. The Agency should also work towards preparing a list of potential review panel members.
- 4.2.3 The Agency shall provide a copy of the draft terms of reference and the review panel procedures in this document to review panel candidates before candidates agree to having their names put forward to the Minister. Prior to their appointment, the Agency shall inform the candidates of any changes made to the terms of reference.
- 4.2.4 In consultation with the Responsible Authority, the Minister will make the final selection of review panel members, appoint them and provide them with their terms of reference [s. 33].
- 4.2.5 When the review panel is appointed, the Agency shall make available to interested parties the letter of referral, a list of panel members and short biographies, the panel's terms of reference, and these panel procedures.
- 4.2.6 In the event that a review panel member resigns or is unable to continue to work, the remaining members shall constitute a review panel unless the Minister determines otherwise. In such circumstances, the Minister may choose to replace the review panel member.
- 4.3 Orientation of Review Panel**
- 4.3.1 As soon as possible after appointment, the Agency shall conduct an orientation meeting with review panel members that explains the review panel's terms of reference, and outlines the review panel's responsibilities. It will also include information on the participant funding program to be administered by the Agency.
- 4.3.2 The Agency panel manager assigned to the review panel will prepare a draft public participation program prior to the orientation meeting. At the orientation meeting or shortly afterward, the review panel will finalize a public participation program.
- 4.4 Terms of Reference**
- 4.4.1 The Agency shall prepare a draft terms of reference for the panel review after consultation with the Responsible Authority, which shall be provided to the Minister for consideration.

- 4.4.2 The Agency and/or the Responsible Authority shall attempt to identify interested parties to the review, and shall make available to them and the proponent the draft terms of reference for comment.
- 4.4.3 The terms of reference for a review panel shall be issued by the Minister, in consultation with the Responsible Authority [s. 33(1)(b)].
- 4.4.4 The terms of reference set the bounds of the review, and should serve to clarify expectations for all participants in the process. The terms of reference should clearly indicate that the review is to be conducted in accordance with the procedures in this document unless otherwise specified. The terms of reference should include a description of the project including its scope pursuant to s. 15 of the Act, and the scope of the factors to be considered pursuant to s. 16 of the Act.
- 4.4.5 If the Minister and the Responsible Authority agree that the circumstances of the review warrant time periods different from those outlined in section 4.1, the terms of reference shall indicate what those differences are and the reasons for them.
- 4.4.6 The terms of reference may also identify issues to be dealt with through mediation (see section 3.0), if appropriate and agreed to by the Responsible Authority, and interested parties, including the proponent.
- 4.4.7 A review panel may require clarification of its terms of reference. The President of the Agency, in consultation with the Responsible Authority, has the authority to provide a clarification to the terms of reference. The procedure for clarifying a term of reference is through a letter from the review panel chairperson to the President of the Agency. Should clarification be requested, the President of the Agency shall ensure a response is provided to the review panel's letter within 14 days. The review panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time periods of the original terms of reference. The review panel shall notify participants of any clarifications of the terms of reference.
- 4.4.8 A review panel may seek an amendment to its terms of reference. For minor amendments, the President of the Agency, in consultation with the Responsible Authority, has the authority to make a change to the terms of reference. The procedure for requesting a minor amendment to a terms of reference is through a letter from the panel chairperson to the President of the Agency. Should a minor amendment be requested, the President of the Agency shall ensure a response is provided to the panel's letter within 14 days. Requests for substantive amendments must be made to the Minister, who will make every effort to respond within 14 days of the request. The review panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time lines of the original terms of reference. The review panel shall notify participants of any changes to its terms of reference.

4.5 Public Participation Program

- 4.5.1** In finalizing its public participation program, the review panel will:
- a) determine language requirements;
 - b) determine the most appropriate means of communication for public participation;
 - c) provide the opportunity for interested parties to indicate their interest in participating in the review;
 - d) take into account cultural seasons, key community gatherings, and general assemblies of aboriginal communities;
 - e) take into account seasonal, economic and social considerations;
 - f) develop a mailing list of all participants in the review, using electronic mail where possible; and
 - g) determine the need for and mandate of a local information officer.
- 4.5.2** The Agency shall establish a public registry. The Agency shall ensure convenient public access to the registry in both hardcopy, Internet, and other forms. The public registry will include information from the letter of referral from the Responsible Authority to submission of the panel report to the Minister of the Environment and the Responsible Authority. The Agency shall also place the post-panel review referred to in s. 4.21.1 on the registry. The registry shall contain a list of documents that would help members of the public participate in the review. The text of the documents should be accessible through the registry, and should be available through the Internet or through a dial up/fax back system. Panels will be encouraged to use modern information systems to facilitate access to, and exchange of, information regarding the review.
- 4.5.3** To facilitate public participation, the proponent shall submit all documentation in hardcopy, and, whenever possible, in electronic form.

Figure 4 - Opportunities for Public Participation

4.6 Supplemental Procedures

- 4.6.1 Review panels may choose to prepare supplemental procedures for the conduct of public hearings in accordance with their terms of reference. Supplemental procedures must be consistent with the procedures outlined in this document and must be approved by the President of the Agency. Any supplementary procedures will be posted on the public registry.

4.7 Technical Advisors to the Review Panel

- 4.7.1 A review panel will be composed of members possessing a variety of expertise, and is empowered [s. 12(3)], throughout the review, to obtain specialist or expert information or knowledge with respect to a project from federal authorities in possession of such information or knowledge. In addition to this, the need may arise for the review panel to retain the services of independent non-government experts or legal counsel at any time during the review but prior to the completion of hearings, to provide advice on certain subjects within the review panel's terms of reference.
- 4.7.2 The list of experts retained shall be made public by the review panel. All documents obtained or created by the experts shall be made publicly available upon receipt by the review panel. This shall exclude information subject to solicitor client privilege where the expert is a lawyer.

4.8 Scoping as Part of an Assessment by a Review Panel

4.8.1 Scoping is an exercise of identifying the environmental and related issues that will be examined in the environmental assessment. Scoping is intended to ensure that the issues to be studied in the review represent fairly the concerns of the interested parties. Scoping is also intended to ensure that all issues considered in the review warrant study and presentation in the EIS.

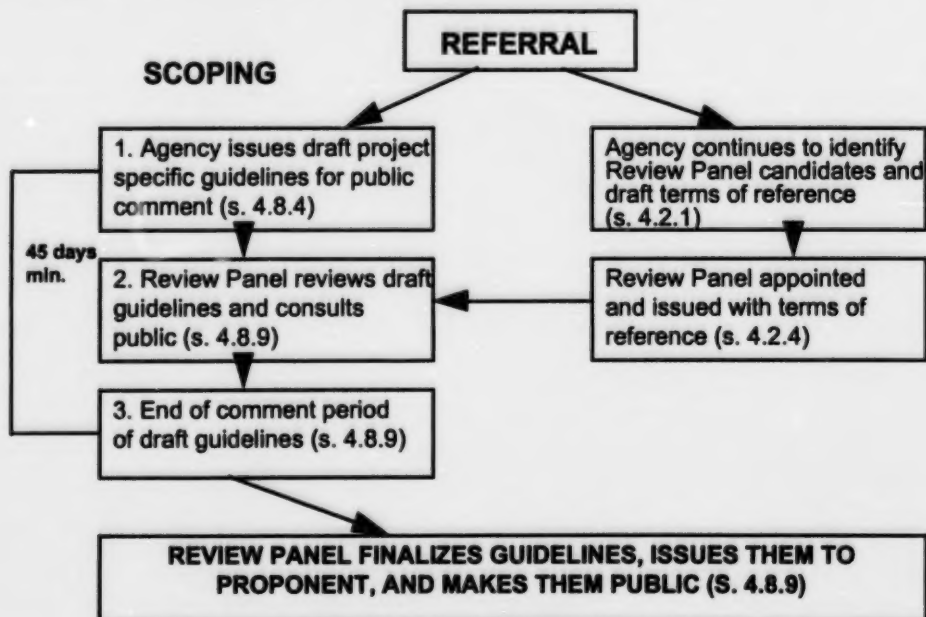
4.8.2 Scoping should commence as early as practicable in an environmental assessment. Scoping consists of the following stages:

- a) agency prepares draft project-specific guidelines, circulates them to identified interested parties and announces their availability for public comment;
- b) review panel receives written comments and may conduct scoping meetings; and
- c) review panel prepares final project-specific guidelines.

Preparation of Draft Guidelines

4.8.3 The Agency will prepare draft guidelines for the preparation of information required for the panel review. Guidelines are directions to the proponent for the preparation of the EIS. Clear guidelines reduce the chances of delays arising from deficiencies in information during the documentation review stage.

Figure 5 - Referral and Scoping (Recommended Time: 111 days)



Consultation on Draft Guidelines

- 4.8.4 The Agency shall make available for public comment draft guidelines at the time of referral or shortly thereafter, for a period of 45 - 90 days. This review period provides an opportunity for the public, government agencies, industry, and the proponent to comment before the draft guidelines are finalized and issued to the proponent.
- 4.8.5 The Agency shall actively solicit the proponent's comments and questions on the draft guidelines.
- 4.8.6 The Agency shall submit a copy of the draft guidelines to the review panel upon its appointment. Shortly after its appointment, the review panel will receive written comments from interested parties on the draft guidelines. The review panel may convene scoping meetings to receive comments on the guidelines.
- 4.8.7 If scoping meetings are held, the review panel shall invite interested parties, the proponent and government agencies to assist in the identification of issues to be addressed in the review by commenting on the draft guidelines. All interested parties may participate at the meetings, or they may contribute their comments to the review panel in writing.
- 4.8.8 Through consultation with interested parties, the review panel will determine the language requirements and the number of copies of the EIS that are necessary for distribution. The review panel shall consider the availability of electronic communication and the potential for reducing the numbers of hardcopies required. The review panel will specify these requirements in the final guidelines.

Finalizing the Guidelines

- 4.8.9 Taking into account the comments it received on the draft guidelines, the review panel will finalize the guidelines. Once the guidelines are finalized, the review panel will issue them to the proponent and make them public.

Where Scoping has Occurred in a Previous Assessment

- 4.8.10 Where scoping has previously occurred under the Act in a screening, comprehensive study, or mediation, or in another jurisdiction, on the same issues to be assessed by a review panel, the scoping process outlined above may not be required.

- 4.8.11 Scoping will occur during the assessment by the review panel unless scoping undertaken during a previous assessment is considered by the Agency to be adequate. In making this determination, the Agency will take into account, among other things, whether interested parties were able to participate fully and effectively, and the sufficiency of the information from the previous assessment.
- 4.8.12 If the Agency considers the previous scoping process to be adequate, it will ensure that the review panel's terms of reference, to be recommended to the Minister for approval, clearly indicate that scoping will not be conducted in the panel review. In such cases, the assessment by the review panel will follow the process and timelines outlined in Appendix E from the point where scoping is completed.
- 4.8.13 Where scoping will not occur in the assessment by the review panel as outlined above, the Responsible Authority shall provide the review panel upon appointment with all information obtained during the previous assessment.

4.9 Environmental Impact Statement (EIS)

Preparation of the EIS

- 4.9.1 Within 90 days of receipt of the guidelines, the proponent will provide the review panel with a written schedule of the time it will take to prepare and submit the EIS. The panel shall make the schedule publicly available.
- 4.9.2 The proponent shall prepare the EIS according to the schedule referred to in section 4.9.1. The EIS shall include a summary.
- 4.9.3 If the proponent will be deviating from the schedule referred to in section 4.9.1, the proponent shall notify the panel a minimum of 30 days prior to the submission of the EIS.
- 4.9.4 While the proponent is preparing the EIS, the review panel manager shall consult with interested parties on the schedule and location for information assessment meetings. The timing and location of the information assessment meetings, to be determined by the review panel, shall take into consideration communities that could be affected by the project, interested parties and their location and time availability, local culture and customs of affected communities, and the need to complete the review in a timely and cost-efficient manner.

Submission of the EIS to the Review Panel

- 4.9.5 The proponent shall submit to the review panel an electronic version of the EIS, in addition to hardcopies, to the extent possible. Information generated in electronic form shall be submitted in digital form, and hardcopy to the extent possible.

Distribution of the EIS

- 4.9.6 The review panel may ask the proponent to distribute the EIS. When this occurs, the review panel manager will monitor the distribution. Where a review panel distributes the EIS, it will only do so upon receipt of sufficient copies of the EIS in appropriate languages for distribution to interested parties.
- 4.9.7 Participants shall be given a minimum of 60 days to provide written comments on the EIS.

4.10 Questions and Answers During the EIS Review Period

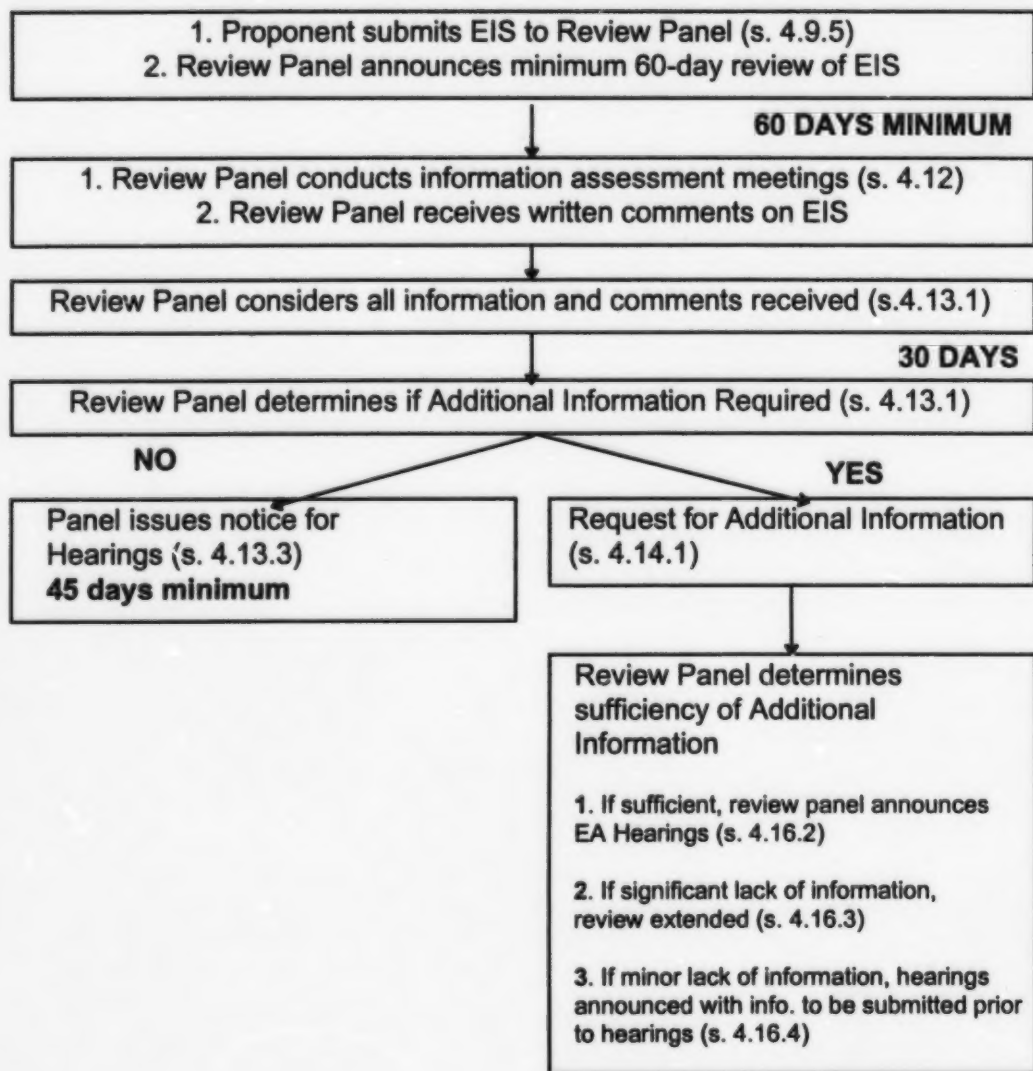
- 4.10.1 During the review of the EIS, interested parties are encouraged to submit written questions to the proponent or other interested parties as necessary, with copies of all questions copied to the panel and placed on the public registry. The review panel may submit written questions at any point in the review. The proponent and interested parties receiving questions should respond expeditiously in writing to the questions received. All answers should be copied to the review panel and placed on the public registry.

4.11 Announcement of Information Assessment Meetings

- 4.11.1 At the time of distribution of the EIS, the panel will announce a schedule for information assessment meetings, giving a minimum 45 days notice. The review panel will request interested parties to submit written comments on the EIS during this period. In addition to meetings and written submissions, the review panel may choose to use other tools.

Figure 6 - Information Assessment

(Recommended Time - 165 days from submission of EIS to start of hearings, not including time to prepare information)



4.12 Information Assessment Meetings

- 4.12.1 The review panel will conduct information assessment meetings which will focus on the EIS submitted by the proponent. The purpose of these sessions is to assist the review panel in determining the adequacy of the information submitted by the proponent. These concise and focused sessions will provide an opportunity for the review panel and participants to seek clarification of and ask questions about the EIS and the information available on the public registry.
- 4.12.2 The review panel has the discretion to determine location, duration, format and structure of the information assessment meetings.
- 4.12.3 All information assessment meetings will be open to the public.

4.13 Determining the Adequacy of the EIS

- 4.13.1 Following completion of information assessment meetings, the review panel shall determine whether it has adequate information to proceed to hearings. In so doing, the review panel shall consider its own detailed review of the documentation, the written comments of the public, government departments, other governments and technical experts, written exchanges between the interested parties, and the discussions held during information assessment meetings.
- 4.13.2 Where the project design has changed subsequent to the submission of an EIS and the review panel concludes that the change in the project design falls outside the project described in the panel's terms of reference, the panel shall inform the Minister of this and seek direction.
- 4.13.3 If a review panel determines that it has adequate information to proceed to hearings, it shall issue a notice a minimum of 45 days prior to the commencement of the hearings.
- 4.13.4 Prior to scheduling the hearings, the review panel manager shall consult with interested parties on the timing and location for the hearings. This could be in the form of a pre-hearings conference or could be a written or oral exchange. The timing, location, and format of the hearings shall take into consideration communities that could be affected by the project, interested parties and their location and time availability, local culture and customs of aboriginal communities, and the need to complete the review in a timely and cost-efficient manner.

4.14 Request for Additional Information

- 4.14.1 If the review panel determines that it does not have adequate information to proceed to hearings, the review panel shall advise the proponent, publicly and in writing, within 30 days following the end of the EIS review period, of the additional information required.

4.15 Submission of Additional Information

- 4.15.1 For scheduling purposes of all participants, the proponent will provide the review panel with a written schedule of the time it will take to prepare the additional information.
- 4.15.2 The proponent shall prepare the additional information according to the schedule referred to in section 4.15.1.
- 4.15.3 If the proponent will be deviating from the schedule referred to in section 4.15.1, the proponent shall notify the review panel a minimum of 30 days prior to submission of the additional information.

4.16 Determination of Adequacy of Additional Information

- 4.16.1 Upon receipt of the additional information, the review panel will ensure that it is made available to the public for review and comment.
- 4.16.2 If after reviewing the additional information and written submissions from interested parties the review panel concludes that it has adequate information to proceed to hearings, it shall announce the hearings within 45 days of receipt of the additional information, providing a minimum of 45 days prior to the commencement of the hearings.
- 4.16.3 If after reviewing the additional information and written submissions from interested parties the review panel is still of the view that it does not have adequate information to proceed to hearings, it shall inform the President of the Agency of the need to extend the overall time period for the review. Upon receipt of an approval for an extension, the review panel shall inform the proponent of outstanding information requirements, and indicate that the hearings will not be scheduled until that information is submitted.

- 4.16.4 If after reviewing the additional information and written submissions from interested parties the review panel is of the view that the lack of information is minor in nature and the review panel receives a commitment from the proponent to provide the outstanding information within 30 days of the second request for additional information, the panel may proceed to hearings within 45 days of receipt of the response to the first request for additional information.

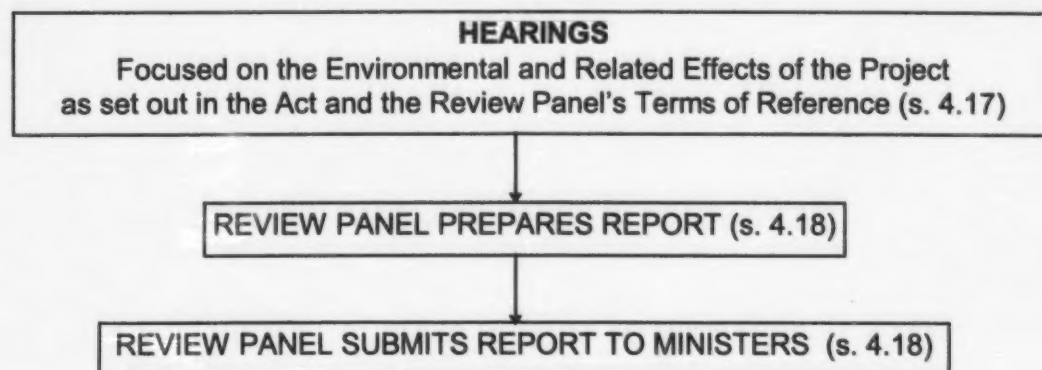
4.17 Hearings

- 4.17.1 The review panel shall notify the public of the hearings schedule, giving a minimum of 45 days notice.
- 4.17.2 The review panel will conduct hearings which will focus on the environmental and related effects of the proposed project, as required by the Act and the terms of reference for the review. These hearings will provide an opportunity for participants to present their views on the project.
- 4.17.3 In most cases, a review panel shall hold two types of hearings:
a) community hearings, and
b) general/technical hearings.
- 4.17.4 The review panel has the discretion to determine that circumstances warrant only one type of the hearing or a combination of the two types in one hearing.
- 4.17.5 Where both types of hearings are held, the review panel shall determine the order in which it shall conduct the hearings

Community Hearings

- 4.17.6 Community hearings are held to encourage the full and open participation of people living in or adjacent to the area potentially affected by the project. Sections 4.17.6 to 4.17.16 apply to community hearings.
- 4.17.7 Participants will be invited to register in advance if they wish to make a presentation, but a review panel will generally make every effort to hear from all persons who wish to speak, regardless of whether they have registered.
- 4.17.8 The review panel chairperson shall make it clear to participants that the hearing will be conducted in an informal, but structured manner, and that all participants are to be treated with respect. The chairperson shall also make it clear what discretionary powers he/she has to conduct the hearing and to ensure a timely exchange of information.

Figure 7 - Environmental Assessment and Reporting (Recommended Time - 120 days)



- 4.17.9 The review panel chairperson shall commence each community hearing with opening remarks.
- 4.17.10 The proponent may be asked to make a presentation at some or all of the community hearings.
- 4.17.11 The public will have the opportunity to present information and make statements. This will be followed by an informal question and answer period.
- 4.17.12 Persons shall, at the beginning of their presentations, identify who they are and what organization, if any, they represent.
- 4.17.13 To ensure all participants have an opportunity to participate, reasonable time limits may be imposed. Where reasonable time limits are not imposed, the chairperson may encourage session participants to make their presentations within a specified period of time, to allow all participants an opportunity to speak.
- 4.17.14 The chairperson has the discretion to restrict discussion or presentations which are outside the mandate of the panel review, or which are needlessly repetitive or irrelevant. Organizations are encouraged to co-ordinate their presentations.
- 4.17.15 The chairperson shall determine the language(s) in which the proceedings shall be conducted. Upon prior notification, the chairperson shall have the discretion to decide if interpretation services are warranted.
- 4.17.16 The chairperson has the discretion to schedule extra hearings to accommodate additional presentations.

General/Technical Hearings

- 4.17.17 General/technical hearings provide an opportunity for registered participants, including the proponent, to make a presentation to the review panel on both technical and non-technical subjects that are within the scope of the review. The hearings also provide an opportunity for participants and the review panel to question the proponent and its submissions, and for the review panel and the proponent to question participants' submissions. Some of these hearings may be focused on one or two topics, which will be specified at the time the hearings are announced. Sections 4.17.17 to 4.17.28 apply to general/technical hearings.
- 4.17.18 Participants who wish to make a presentation at a general/technical hearing should provide notice of that intention to the review panel at least 10 days before the hearings commence. Any person providing timely notice of intention to participate will be included on the list of scheduled participants. The opportunity for persons who have not registered to present will be at the discretion of the chairperson.
- 4.17.19 Persons shall, at the opening of their presentation, identify who they are and what, if any, organization they represent.
- 4.17.20 The panel chairperson shall make it clear to participants that the hearing will be conducted in a manner that complies with the review panel's terms of reference, the procedures in this document, and any supplemental hearings procedures that may have been issued by the review panel. It should be specified that the hearings will be non-judicial, but structured, and that all participants are to be treated with respect. The chairperson shall also make it clear what discretionary powers he/she has to moderate the hearing and to ensure a timely exchange of information.
- 4.17.21 Presentations of a scientific or technical nature should preferably be submitted in writing. Participants should make every effort to distribute written submissions to other participants and the panel at least one week prior to the commencement of the hearings. In cases where this does not occur, the panel shall make the document available to other participants. The one-week period allows the panel and participants to review the submissions before hearings commence. The panel may refuse to accept unsolicited written submissions containing substantive scientific or technical information not already available to the public that are received less than one week prior to the hearing at which the party is scheduled to present.
- 4.17.22 Where an oral presentation is supported by a written submission, the chairperson may direct the presenter to summarize orally the main points in his or her written submission rather than read directly from his or her written submission.

- 4.17.23 The chairperson may impose time limits for presentations, to ensure that all participants have an opportunity to participate. The chairperson has the discretion to grant longer time limits to presenters, provided one week advance notice is provided by the presenter to the chairperson.
- 4.17.24 The chairperson has the discretion to restrict discussion or presentations that are outside the mandate of the panel review, or that are needlessly repetitive or irrelevant. Organizations are encouraged to co-ordinate their presentations.
- 4.17.25 If requested, time will be allocated by the review panel at the end of the hearings to receive any closing statements that participants or the proponent may wish to make. If possible, closing statements should be scheduled within 7 days from the completion of the scheduled presentations. Such statements are not to contain any new information and will not be subject to questioning.
- 4.17.26 The chairperson shall determine the language(s) in which the proceedings shall be conducted. Upon prior notification, the chairperson shall have the discretion to decide if interpretation services are warranted.
- 4.17.27 Where the review panel exercises authority under s. 35(3) or 35(4) of the Act, the review panel shall make available its reasons for exercising that authority. If possible, information provided at an in-camera meeting should be summarized or characterized for the public record in a way that does not cause harm to an interested party.
- 4.17.28 The review panel shall not receive any new information after the hearings have ended.

Questioning - Community Hearings

- 4.17.29 Each person may be questioned informally for purposes of clarification, immediately after his or her presentation. A reasonable period of time for questions shall be provided following each presentation.
- 4.17.30 The order of the questioning is at the discretion of the chairperson. Review panel members may ask questions at any time.

Questioning - General/Technical Hearings

- 4.17.31 A reasonable period of time for questions shall be provided following each presentation. If a participant would like additional time during the question period to ask detailed questions of another participant, advance notice should be provided to the panel.
- 4.17.32 Persons may be subject to extensive detailed questioning to obtain further information or explanation.

- 4.17.33 The order of the questioning is at the discretion of the chairperson. Review panel members may ask questions at any time.
- 4.17.34 Ordinarily, the chairperson will allow a participant to put questions directly to the presenter. The chairperson shall refuse to allow questions that are abusive or excessively confrontational. Where a person does not abide by the procedures and the direction of the chairperson, the chairperson has the authority to refuse to permit further questioning from that individual.
- 4.17.35 Where a review panel intends to use its powers pursuant to s. 35(2), the chairperson shall inform the person subject to the order, orally or in writing of the intention of the panel to use that power.
- 4.17.36 The chairperson has the discretion to restrict questions that are considered outside the mandate of the panel, or are needlessly repetitive or irrelevant.

Questioning - Other

- 4.17.37 The chairperson has the discretion to allow for any additional questions at the end of each hearing, if time permits.
- 4.17.38 The review panel members will be free to pursue any line of questioning relative to its terms of reference at any time during the questioning of a presentation and at the end of each session.

Representation by Others

- 4.17.39 At community hearings, groups and individuals are encouraged to speak for themselves.
- 4.17.40 At the general/technical hearings, groups and individuals may speak for themselves, or may be represented by others.

Transcripts

- 4.17.41 The chairperson shall ensure that a transcript of each day of the hearings is produced and is made available no longer than 14 days from the date of each day of the hearing. Electronic transcripts should be made available.

4.18 Report of the Review Panel

- 4.18.1 The review panel will submit its report to the Minister of the Environment and the Minister of the Responsible Authority.
- 4.18.2 The report of the review panel should include an appendix listing commitments made by the proponent and government agencies during the review process.
- 4.18.3 On receiving the report of the review panel, the Minister shall make the report available to the public. Where possible, an electronic version of the report should be made available.

4.19 Government Response to the Report of the Review Panel

- 4.19.1 The government shall make every effort to respond to the report of the review panel within 60 days of receipt of the report.
- 4.19.2 In cases of joint federal-provincial reviews, efforts should be made to co-ordinate the timing of the governments' responses.

4.20 Termination of an Assessment by a Review Panel

- 4.20.1 If at any time during a panel review the Responsible Authority decides it will not exercise a power, duty or function referred to in s. 5 of the Act, the Minister may terminate the assessment by the review panel.

4.21 Evaluation of Panel Review Process

- 4.21.1 After the review panel submits its final report, there should be an opportunity for registered participants to evaluate the operation, management and effectiveness of the panel review process. The review panel should also be expected to perform a self-analysis and consider the effectiveness of the panel's terms of reference and procedures. The Agency shall consider the evaluations and consider what, if any, procedural modifications are desired. The Agency shall make such information available to the public and kept on file for use by future review panels.

4.22 Use of Electronic Communication

- 4.22.1** For all information, notices and other records issued by the panel and participants throughout the review process, every effort should be made to use electronic communication, in addition to the requirements of the Act.

APPENDIX A - LIST OF ACRONYMS

CEAA

EIS

RAC

The Canadian Environmental Assessment Agency

Environmental Impact Statement

Regulatory Advisory Committee

APPENDIX B - GLOSSARY**FROM SECTION 2 OF THE ACT****AGENCY**

means the Canadian Environmental Assessment Agency established by section 61.

ENVIRONMENTAL EFFECT

means, in respect of a project:

- a) any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
- b) any change to the project that may be caused by the environment, whether any such change occurs within or outside Canada.

INTERESTED PARTY

means, in respect of an environmental assessment, any person or body having an interest in the outcome of the environmental assessment for a purpose that is neither frivolous nor vexatious.

MINISTER

means Minister of the Environment.

PROPONENT

in respect of a project, means the person, body, federal authority or government that proposes the project.

RESPONSIBLE AUTHORITY

in relation to a project, means the federal authority that is required pursuant to subsection 11(1) to ensure that an environmental assessment of the project is conducted.

FROM SECTION 40(1) OF THE ACT

JURISDICTION includes:

- a) a federal authority;
- b) the government of a province;
- c) any other agency or body established pursuant to an Act of Parliament or the legislature of a province and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
- d) any body established pursuant to a land claims agreement referred to in section 35 of the Constitution Act, 1982 and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
- e) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and
- f) an international organisation of states or any institution of such an organisation.

OTHERS

ACT

The Canadian Environmental Assessment Act.

ADDITIONAL INFORMATION

Proponent's response to review panel's request for additional information following the review of the Environmental Impact Statement.

ENVIRONMENTAL IMPACT STATEMENT

Document prepared by the proponent in response to Guidelines issued by the review panel.

GUIDELINES

Directions to the proponent for the preparation of an Environmental Impact Statement.

HEARINGS

Public hearings held by the review panel that focus on the environmental and related effects of the proposed project as required by the Act and the terms of reference for the review.

INFORMATION ASSESSMENT MEETINGS

Public meetings held by the review panel to assist the review panel in determining the adequacy of the EIS submitted by the proponent.

MAKE AVAILABLE

Review panel places information on the public registry.

NOTIFY

Review panel issues an information release which is distributed to interested parties.

PARTICIPANT

A participant is an interested party who has given notice of an intention to participate in the assessment by the review panel. A proponent is also considered to be a participant.

PRE-REFERRAL NOTICE

Written notice from the Responsible Authority to the Agency indicating that a project is likely to be referred for assessment by a review panel.

PRESIDENT OF THE AGENCY

President of the Canadian Environmental Assessment Agency. The President may exercise all of the powers of the Minister under the Act to the extent authorized by the Minister pursuant to s. 65(2) of the Act.

PUBLIC REGISTRY

Pursuant to section 55 of the Act, a registry established by a Responsible Authority for screenings and comprehensive studies, and by the Agency for mediations and panel reviews. The public registry consists of:

- a listing of all the environmental assessments currently being conducted by or for federal departments or agencies;
- a listing of the available documents relating to each environmental assessment;
- a system that allows the public to locate and order these documents; and
- a system that provides requested documents to the public.

REGISTERED PARTICIPANT

A participant that has registered with the review panel to participate in hearings.

REVIEW PANEL

Persons appointed by the Minister of the Environment pursuant to section 33 of the Act to conduct an assessment of a proposed project.

REVIEW PANEL MANAGER

A member of the Canadian Environmental Assessment Agency appointed by the President of the Agency to manage the panel review.

SCOPING

An exercise of identifying the environmental and related issues that will be examined in an environmental assessment.

APPENDIX C - FEDERAL-PROVINCIAL HARMONIZATION AGREEMENTS

Signed agreements:

CCME Co-operative Principles for Environmental Assessment (Adopted by the CCME in May 1991)

CCME Framework for Environmental Assessment Harmonization (Adopted by the CCME in November 1992)

Canada-Alberta Agreement for Environmental Assessment Co-operation (August 1993)

Canada-Manitoba Agreement for Environmental Assessment Harmonization (November 1994)

Federal-Provincial Framework Agreement for Environmental Co-operation in Atlantic Canada (1994)

Canada-British Columbia Agreement for Environmental Assessment Co-operation (1997)

APPENDIX D - LIST OF DOCUMENTS IN A PANEL REVIEW

1. Pre-Referral Notice (from Responsible Authority to Agency)
2. Letter of Referral (from Responsible Authority to Minister of the Environment)
3. Terms of Reference for review panel (as issued by Minister of the Environment)
4. Review-specific federal-provincial agreement (prepared by Agency, Responsible Authority, and other jurisdiction in case of joint reviews)
5. Review panel member biographies (prepared by Agency)
6. Procedures for an Assessment by a Review Panel (this document)
7. Supplementary Procedures (prepared by review panel)
8. Project Description (prepared by proponent)
9. Draft Guidelines for the Preparation of the Environmental Impact Statement (prepared by Agency)
10. Guidelines for the Preparation of the Environmental Impact Statement (prepared by review panel)
11. Environmental Impact Statement (prepared by proponent)
12. Additional Information (prepared if necessary by proponent)
13. Panel Report (prepared by panel)
14. Government Response to Panel Report

ANNEXE E - PROCESS FOR ASSESSMENT BY A REVIEW PANEL

APPENDIX E - Process for Assessment by a Review Panel

When No Additional Information Required - 13 MONTHS (from referral to panel report, exclusive of doc. prep.)

When Additional Information Required - 14.5 MONTHS (from referral to panel report, exclusive of doc. prep.)

